

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PATRICK PIZZELLA,¹ ACTING §
SECRETARY OF LABOR, UNITED §
STATES DEPARTMENT OF §
LABOR, §
Plaintiff, §
§
v. §
§
DC BROADWAY, INC., D/B/A DON §
CARLOS MEXICAN §
RESTAURANT, CHRISTOS §
STATHATOS, INDIVIDUALLY, and §
KIN CHAN, INDIVIDUALLY, §
Defendants. §

CIVIL ACTION NO. 4:18-cv-2904

JURY TRIAL DEMANDED

CONSENT JUDGMENT

Plaintiff has filed his complaint and Defendants have agreed to the entry of judgment without contest. It is, therefore, upon motion of the Plaintiff and for cause shown,
ORDERED Defendants, their officers, agents, servants, employees and all persons in active concert or participation with them be permanently enjoined from violating the provisions of Sections 7 and 15(a)(2) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§201, *et seq.*, hereinafter referred to as the Act, in any of the following manners:

1. Defendants shall not, contrary to Sections 7 and 15(a)(2) of the Act, 29 U.S.C. §§207 and 215(a)(2) employ any employee in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, for workweeks longer than forty (40) hours, unless the employee receives

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Patrick Pizzella, Acting Secretary of Labor, is automatically substituted as the party in interest for the former Secretary of Labor R. Alexander Acosta.

compensation for his or her employment in excess of forty (40) hours at a rate not less than one and one-half times the regular rate at which he or she is employed.

2. Defendants have paid a total amount of \$205,434.60 (comprised of \$102,717.30 in back wages and \$102,717.30 in liquidated damages), which the Parties agree, and the Court finds, is due under the Act to Defendants' employees named in the attached Exhibit A for the period since August 22, 2015. The above payments were made as follows: (1) Defendants paid to the employees directly \$156,436.42 (including \$78,218.21 in back wages and \$78,218.21 in liquidated damages) and (2) Defendants paid the remaining \$48,998.18 (including \$24,499.09 in back wages and \$24,499.09 in liquidated damages) to the U.S. Department of Labor. The Plaintiff shall make appropriate distribution of the unpaid compensation to the employees, or their estate if necessary, less income tax and social security deductions. In the event that any of the money cannot be distributed within three (3) years hereof because of inability to locate the proper person, or because of their refusal to accept, the money shall be deposited with the U.S. Treasury. Defendants are liable for their portion of payroll taxes due to the Internal Revenue Service. Defendants shall provide the Plaintiffs identified in Exhibit A of this Consent Judgment with IRS Forms W-2 for the portion representing back wages and IRS Forms 1099 for the portion representing liquidated damages.

3. Upon entry of this judgment, Defendants' employees not specifically named in Exhibit A shall be restored their right to bring an action under Section 16(b) of the Fair Labor Standards Act, 29 U.S.C. §216(b), and neither the filing of this action nor the entry of this judgment shall bar such an action. In any such action, the statute of limitations shall be deemed tolled from August 22, 2015 to July 22, 2018. Moreover, the filing of this action and provisions of this judgment shall not be interpreted to limit, prejudice, or preclude the right of the Secretary

of Labor or any of Defendants' employees from filing an action under the Act covering violations alleged to have occurred after July 22, 2018.

4. Within 60 days of entry of this judgment, Defendants agree to provide training to their management and human resources employees involved in any stage of the payment process for tipped employees. The training shall cover the requirements of the FLSA, including but not limited to the proper calculation of the regular rate of pay and overtime premiums for tipped employees.

5. Within 90 days of the entry of this judgment, Defendants agree to conduct and complete an audit of its payroll and time records to confirm that tipped employees were paid the proper overtime premiums. The audit should cover the time period from July 23, 2018 to the present. In the event overtime compensation is found to be due, Defendants agree to pay their employees and former employees any and all back wages owed to them for that time period.

Each party agrees to bear his or her own attorneys' fees, costs and other expenses in connection with any stage of this proceeding, including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

Dated this ____ day of _____, 2019.

GREY H. MILLER
SENIOR UNITED STATES DISTRICT JUDGE

FOR THE RESPONDENTS:



CHRISTOS STATHATOS

President and Owner

DC Broadway, Inc., d/b/a Don Carlos
Mexican Restaurant

Date: 9/16, 2019



KIN CHAN

Director of Operations

DC Broadway, Inc., d/b/a Don Carlos
Mexican Restaurant

Date: 9/16, 2019



SHANE A. MCCLELLAND

Attorney

State Bar No. 24046383

SD Tex. Bar No. 642324

Email: shane@hmtrial.com

Date: 9/10, 2019

Law Office of Shane McClelland, PLLC
24275 Katy Freeway, STE 400
Katy, Texas 77494
Telephone: (713) 987-7107
Facsimile: (832) 827-4207

CERTIFICATE OF SERVICE

I certify that on 9/16/, 2019, a true and correct copy of the executed *Consent Judgment* was served upon Defendants' counsel via electronic filing and email PDF at the following:

Shane A. McClelland
Law Office of Shane McClelland, PLLC
24275 Katy Freeway, STE 400
Katy, Texas 77494
Email: shane@hmtrial.com


JENNIFER J. JOHNSON
Attorney